



Carolyn N. Long. *Mapp v. Ohio: Guarding Against Unreasonable Searches and Seizures*. Lawrence: University Press of Kansas, 2006. xii + 228 pages. \$35.00 (cloth), ISBN 978-0-7006-1440-0; \$15.95 (paper), ISBN 978-0-7006-1441-7.

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Debating the Exclusionary Rule

In June, 1961, the U. S. Supreme Court delivered its opinion in *Mapp v. Ohio*, thereby launching the “due process revolution” in which the Court, under Chief Justice Earl Warren, expanded the universe of rights and protections guaranteed to individuals in the criminal justice system. Justice Tom C. Clark’s majority opinion held that the “exclusionary rule,” by which judges barred evidence gathered in the course of violating the Fourth Amendment’s protections against unreasonable searches and seizures from being entered in federal trials, was constitutionally required and thus also applied in state criminal proceedings. The *Mapp* ruling was controversial in its time and has remained so to the present day, with courts, legislatures, and even presidents entering the fray at various times attempting to redraw the lines circumscribing law enforcement that *Mapp* established. On one side were those holding that the exclusionary rule is imbedded within the meaning of the Fourth Amendment; without it, protections against unreasonable searches and seizures have no practical effect. Their opponents insisted that the exclusionary rule is not constitutionally mandated at all but rather is a “judicially created” rule of evidence and thus states must be allowed to decide for themselves whether and how it will be enforced.

Mapp v. Ohio is the centerpiece of Carolyn N. Long’s careful, detailed study, but the book is about much more than the case itself, for Long also provides an extensive examination of the complex and shifting legal and political contexts in which the exclusionary rule evolved, both before and after *Mapp*. Issues in criminal law can and often do resonate strongly with the public (and therefore politicians), especially when crime rates appear to be soaring, as they were in the 1960s and 1970s. Contentious debates arose over whether the Warren Court’s liberal protections for due process rights allowed for the “coddling” of criminals at the expense of the public’s safety. And, as was the case with Dollree Mapp’s encounters with the Cleveland police, race is often at issue because,

historically, aggressive law enforcement tactics have disproportionately affected African American communities. One of the most engaging aspects of Long’s account is the ways in which the story she is telling takes unexpected turns. When the Cleveland police entered Dollree Mapp’s home without a warrant, they were looking for evidence of her involvement with illegal gambling. But in the process of searching her home, they encountered materials that violated an Ohio anti-obscenity statute. Mapp was acquitted on the gambling charges but was re-arrested for possessing the obscene pictures and books, a felony crime in Ohio punishable by a fine of two thousand dollars and up to seven years in prison. Years earlier the Ohio Supreme Court had ruled that the federal exclusionary rule did not apply to the states, and thus the evidence police had seized when they entered her home without a warrant was admitted and used (along with perjured testimony from the police) to convict Mapp. Her appeal attracted the attention of the Ohio Civil Liberties Union, which saw an opportunity to challenge the constitutionality of the Ohio anti-obscenity law. Two years after Mapp’s arrest, all seven justices of the Ohio Supreme Court agreed that the warrantless search of her home had been illegal, and four ruled the Ohio anti-obscenity law unconstitutional. But, once again, things took an unexpected turn, for under the Ohio constitution six of the seven justices were required to agree in order for a law to be struck down. Thus, through a quirk in Ohio law, Mapp’s conviction for violating the anti-obscenity law was allowed to stand.

Long’s narrative then backtracks to an extensive and detailed history of the Fourth Amendment and the exclusionary rule that, while certainly informative and useful, runs some risk of confusing the narrative for readers less familiar with legal history. When the story of the *Mapp* case resumes at the U. S. Supreme Court, Long skillfully traces the process by which “a straightforward First Amendment obscenity case was transformed into one

of the most important criminal procedure decisions” in American legal history (p. 80). This is the strongest section of the book. The justices were unanimous in deciding that the Ohio anti-obscenity statute would be struck down on First and Fourteenth Amendment grounds. But a chance meeting of Justices Hugo Black, William Brennan, and Tom Clark in an elevator resulted in an agreement that the opinion should go further. The *Mapp* case presented an opportunity to reverse one of the Court’s earlier decisions, *Wolf v. Colorado*, a 1949 ruling declaring that, while the Fourth Amendment was applicable to the states, the federal exclusionary rule need not be. Justice Felix Frankfurter’s opinion in *Wolf* had characterized the exclusionary rule not as an explicit requirement of the Fourth Amendment, but rather as merely a rule designed to deter police misconduct. Long’s meticulous research reveals the maneuvers by which Justice Clark, who believed that in *Wolf* the Court had “said that the Fourth Amendment applied to the states but just didn’t go all the way” (p. 104), crafted his opinion and persuaded five of his brethren to go along with him in reversing *Wolf*.

Subsequent chapters follow the circuitous path the exclusionary rule has taken since 1961. Again, there is some loss of focus in Long’s narrative when she diverts to an extended discussion of studies that attempted to evaluate whether the *Mapp* ruling actually changed police behavior. This research, which produced confusing and mixed results, seems extraneous to the story Long is telling. She regains her footing when she addresses the

ways in which the *Mapp* decision, like others in the Warren Court’s “due process revolution,” served as political footballs in subsequent decades. But again, there are interesting twists in the narrative: Political conservatives, who originally decried the ruling, came to champion limits on police actions after the violent incidents at Ruby Ridge, Idaho and the Branch Davidion compound near Waco, Texas. And, while the conservative Burger and Rehnquist Courts chipped away at *Mapp*’s central holding in subsequent decades, state courts used state constitutions to shore up the Fourth Amendment’s protections against illegal searches and seizures for their own citizens and resisted the high court’s trend toward reining in the exclusionary rule. The result, Long concludes, is a Fourth Amendment jurisprudence as much in disarray after the *Mapp* decision as before it.

This thorough, prodigiously researched treatment of *Mapp v. Ohio* will provide new insights into the complexities of the case for those familiar with the Court’s opinion. A more tightly focused narrative, with less repetition, would have made even more evident Long’s original and important contributions to the construction of the case’s history. For historians and students of the twentieth-century United States more generally, the book will serve as a vivid illustration of the complex, and often unexpected, ways in which developments in constitutional law are integrally tied to the “bigger picture” of American history.

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